IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 422 of 2002
with
CROSS OBJECTION (STAMP NUMBER) No 1 of 2003
with
CIVIL APPLICATION NO.1460 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ORIENTAL INSURANCE CO. LTD
Versus
DUDHIBEN DHIRUBHAI AHIR W/O DECD. DHURUBHAI K. AHIR

Appearance:
1. First Appeal No. 422 of 2002
MR KK NAIR for Petitioner No. 1
MR GM JOSHI for Respondent No. 1-4
NOTICE SERVED for Respondent No. 1-4
SERVED BY RPAD - (N) for Respondent No. 5
MR BJ TRIVEDI for Respondent No. 6
MS JIGNASA B TRIVEDI for Respondent No. 6
2. CROSS OBJECTION (STAMP NUMBER) No. 1 of 2003
MR GM JOSHI for Petitioner No. 1

MR KK NAIR for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/03/2003

ORAL JUDGEMENT
(Per : MR.JUSTICE N.G.NANDI)

FIRST APPEAL NO.422 OF 2001

1. This appeal under Section 173 of the Motor Vehicles Act,1988 (for short "the Act") is directed against the order dated 9.11.2001 under Section 163 of the Act passed by the M.A.C.Tribunal (Main) Bhavnagar, whereby the appellant - Insurance Company has been directed to pay Rs.3,69,500/- with 9% interest from the date of petition till the realization with proportionate cost.

2. Mr.G.M.Joshi, learned advocate for respondent nos.1 and 2 - original claimants has vehemently objected to the maintainability of this appeal under Section 173 of the Act, contending that the appellant Insurance Company is not entitled to question the quantum determined by the claims Tribunal inasmuch as no application under Section 170 of the Act was submitted by the Insurance Company before the claims Tribunal much less any order under Section 170 of the Act by the claims Tribunal.

3. Mr. K.K.Nair, learned advocate for the appellant - Insurance Company has fairly stated that no application under Section 170 of the Act was submitted by the Insurance Company before the claims Tribunal, seeking permission to contest the claim of the claimants.

4. It is stated by Mr. K.K.Nair, learned advocate for the appellant Insurance Company that the application dated 20.7.2001 filed before the claims Tribunal in M.A.C.Petition No.1386 of 2000 be construed and treated as an application for permission under Section 170 of the Act. We are given the copy of the application dated 20.7.2001 along with the order dated 21.9.2001 passed thereunder. We have gone through the copy of such

application. It is suggested therefrom that this is an application simpliciter for permitting the Insurance Company to cross-examine the deponents of the affidavit for the purpose of deciding application under Section 163 A of the Act. None of the ingredients for attracting the provisions of Section 170 of the Act have been stated in this application nor there is any prayer in this application for permission under Section 170 of the Act to contest the claim on all counts including the income be granted to the Insurance Company.

5. Under the circumstances, we are unable to accede to the submissions advanced by Mr.Nair on behalf of the Insurance Company in this regard and the application dated 20.7.2001, Exh.26, cannot be treated as an application, seeking permission under Section 170 of the Act.

6. Certified copy of the application dated 20.7.2001, Exh.26, in M.A.C.Petition No.1386 of 2000 together with the order dated 21.9.2001 passed in the said application by the claims Tribunal, is kept on record.

7. Thus, it will be seen from the above that there is no application submitted by the Insurance Company before the claims Tribunal under Section 170 of the Act and in absence of any permission under Section 170 of the Act by the claims Tribunal to the Insurance company to contest the claim of income, the present appeal under Section 173 of the Act would not be maintainable and liable to be dismissed as not maintainable. Order accordingly. No costs.

8. R & P requisitioned from the trial Court be returned forthwith. The amount of Rs.25,000/- deposited under Section 173 of the Act be transmitted to the claims Tribunal forthwith. The claims Tribunal shall pass appropriate orders as regards the investment / disbursement of the amount deposited by the Insurance Company. Excess amount, if any, be refunded to the Insurance Company.

CROSS OBJECTION NO. 1 OF 2003.

1. It is sated by Mr.G.M.Joshi, learned advocate for the respondent claimants that the cross objection no.1 of 2003 has been filed under Order 41 Rule 22 of the CPC in First Appeal No.422 of 2002 are not pressed in view of the order passed in First Appeal No.422 of 2002.

CIVIL APPLICATION NO.1460 OF 2002.

In view of the order passed in main appeal, this civil application does not survive. Civil Application is disposed of accordingly.

(N.G.Nandi,J.)

(D.A.Mehta,J.)

(vipul)